

109TH CONGRESS  
1ST SESSION

# S. 991

To amend title I of the Employee Retirement Income Security Act of 1974 to limit the availability of benefits under an employer's nonqualified deferred compensation plans in the event that any of the employer's defined benefit pension plans are subjected to a distress or PBGC termination in connection with bankruptcy reorganization or a conversion to a cash balance plan, to provide appropriate funding restrictions in connection with the maintenance of nonqualified deferred compensation plans, and to provide for appropriate disclosure with respect to nonqualified deferred compensation plans.

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## IN THE SENATE OF THE UNITED STATES

MAY 10, 2005

Mr. KENNEDY (for himself, Mr. DURBIN, Mr. HARKIN, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to limit the availability of benefits under an employer's nonqualified deferred compensation plans in the event that any of the employer's defined benefit pension plans are subjected to a distress or PBGC termination in connection with bankruptcy reorganization or a conversion to a cash balance plan, to provide appropriate funding restrictions in connection with the maintenance of nonqualified deferred compensation plans, and to provide for appropriate disclosure with respect to nonqualified deferred compensation plans.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
 5       “Pension Fairness and Full Disclosure Act of 2005”.

6       (b) **TABLE OF CONTENTS.**—The table of contents is  
 7       as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

**TITLE I—FAIRNESS IN PLAN TERMINATIONS AND CONVERSIONS**

Sec. 101. Termination fairness standard for nonqualified deferred compensation plans in connection with pension plan terminations based on bankruptcy reorganization or in connection with conversions to cash balance plans.

Sec. 102. Penalty on funding nonqualified deferred compensation plans in the event of a pension plan termination based on bankruptcy reorganization or a conversion of a pension plan to a cash balance plan.

**TITLE II—FAIRNESS IN FUNDING**

Sec. 201. Treatment under ERISA of employers that fund nonqualified deferred compensation plans while maintaining underfunded defined benefit plans.

Sec. 202. Penalty on funding nonqualified deferred compensation plans while maintaining underfunded defined benefit plans.

**TITLE III—FAIRNESS IN DISCLOSURE**

Sec. 301. Disclosure with respect to benefits under nonqualified deferred compensation plans.

8       **SEC. 2. FINDINGS AND PURPOSE.**

9       (a) **FINDINGS.**—The Congress finds as follows:

10               (1) The pension system sponsored by private  
 11       employers is in a weakened state due to industry-  
 12       wide crises, changing market forces, and the pres-  
 13       sures of globalization.

1           (2) Employers increasingly are terminating or  
2       reducing the benefits provided under traditional de-  
3       fined benefit pension plans.

4           (3) More than 44,000,000 workers, retirees,  
5       and their families depend on defined benefit pension  
6       plans as a critical component of their retirement se-  
7       curity in addition to Social Security.

8           (4) Many defined benefit pension plans are un-  
9       derfunded and the Pension Benefit Guaranty Cor-  
10      poration, the agency that insures traditional pen-  
11      sions, has also gone into deficit.

12          (5) Congress in enacting the Employee Retire-  
13      ment Income Security Act of 1974 intended employ-  
14      ers to adequately fund their pension plans and did  
15      not intend for the Pension Benefit Guaranty Cor-  
16      poration to be used as a means for restructuring  
17      companies to escape their unfunded pension liabil-  
18      ities, or circumvent collective bargaining obligations.

19          (6) Cash balance pension plans often reduce  
20      traditional defined benefit pension obligations and  
21      adequate standards do not exist to adequately pro-  
22      tect the pensions of pension plan participants, par-  
23      ticularly older participants.

24          (7) Corporate executives often preserve or en-  
25      hance executive pension and other benefits at the

1 same time the benefits of non-highly paid employees  
2 are reduced.

3 (b) PURPOSE.—It is the purpose of this Act to better  
4 protect the retirement benefits afforded to workers and  
5 retirees by protecting the solvency of the Pension Benefit  
6 Guaranty Corporation and ensuring equitable treatment  
7 of corporate executives as compared to treatment provided  
8 to other employees when restructuring employers shift un-  
9 funded pension liabilities onto the Pension Benefit Guar-  
10 anty Corporation or convert to cash balance pension plans  
11 without adequately protecting the retirement security of  
12 older workers.

## 13 **TITLE I—FAIRNESS IN PLAN** 14 **TERMINATIONS AND CONVER-** 15 **SIONS**

### 16 **SEC. 101. TERMINATION FAIRNESS STANDARD FOR NON-** 17 **QUALIFIED DEFERRED COMPENSATION** 18 **PLANS IN CONNECTION WITH PENSION PLAN** 19 **TERMINATIONS BASED ON BANKRUPTCY RE-** 20 **ORGANIZATION OR IN CONNECTION WITH** 21 **CONVERSIONS TO CASH BALANCE PLANS.**

22 (a) IN GENERAL.—Section 206 of the Employee Re-  
23 tirement Income Security Act of 1974 (29 U.S.C. 1056)  
24 is amended by adding at the end the following new sub-  
25 section:

1       “(g) TERMINATION FAIRNESS STANDARD FOR NON-  
2 QUALIFIED DEFERRED COMPENSATION PLANS IN CON-  
3 NECTION WITH PENSION PLAN TERMINATIONS BASED  
4 ON BANKRUPTCY REORGANIZATION OR IN CONNECTION  
5 WITH CONVERSIONS TO CASH BALANCE PLANS.—

6               “(1) IN GENERAL.—In any case in which a cor-  
7 poration is a plan sponsor of a defined benefit plan  
8 with respect to which a plan amendment is adopted  
9 that has the effect of—

10               “(A) implementing a distress termination  
11 of the plan under section 4041(c) based on  
12 bankruptcy reorganization or a termination of  
13 the plan initiated by the Pension Benefit Guar-  
14 anty Corporation under section 4042 based on  
15 bankruptcy reorganization, in any case in which  
16 the plan is not sufficient for guaranteed bene-  
17 fits (within the meaning of section 4041(d)(2))  
18 as of the proposed termination date; or

19               “(B) converting such plan to a cash bal-  
20 ance plan, in any case in which the amend-  
21 ment—

22               “(i) results in a significant reduction  
23 in the rate of future benefit accruals (with-  
24 in the meaning of section 204(h)(1)) of

1 participants with at least 10 years of serv-  
 2 ice under the plan; or

3 “(ii) does not provide for an election  
 4 by affected participants with at least 10  
 5 years of service under the plan (and their  
 6 beneficiaries) to retain coverage under the  
 7 terms of the plan as in effect immediately  
 8 prior to the amendment,

9 any covered deferred compensation plan established  
 10 or maintained by such plan sponsor after the date  
 11 of the adoption of such plan amendment shall meet  
 12 the termination fairness standard of this subsection  
 13 with respect to such plan amendment.

14 “(2) TERMINATION FAIRNESS STANDARD.—A  
 15 covered deferred compensation plan established or  
 16 maintained by a plan sponsor described in para-  
 17 graph (1) meets the termination fairness standard of  
 18 this subsection with respect to a plan amendment  
 19 described in paragraph (1) if, during the 5-year pe-  
 20 riod beginning on the date of the adoption of such  
 21 plan amendment—

22 “(A) no amount of deferred compensation  
 23 accrues to a disqualified individual under the  
 24 terms of such covered deferred compensation  
 25 plan (irrespective of whether the accrual in de-

ferred compensation is expressed in the form of a promise, a guarantee, or any other representation); and

“(B) in the case of a covered deferred compensation plan established during or after the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is adopted during or after such 1-year period), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) CASH BALANCE PLAN.—

“(i) IN GENERAL.—The term ‘cash balance plan’ means a defined benefit plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age.

“(ii) REGULATIONS TO INCLUDE SIMILAR OR OTHER HYBRID PLANS.—The Secretary shall issue regulations which provide that a defined benefit plan (or any portion

1 of such a plan) which has an effect similar  
2 to a plan described in clause (i) shall be  
3 treated as a cash balance plan. Such regu-  
4 lations may provide that if a plan sponsor  
5 represents in communications to partici-  
6 pants and beneficiaries that a plan amend-  
7 ment results in a plan being described in  
8 the preceding sentence, such plan shall be  
9 treated as a cash balance plan.

10 “(B) NOTICE DATE.—The term ‘notice  
11 date’ means, with respect to an amendment de-  
12 scribed in paragraph (1)—

13 “(i) in the case of a distress termi-  
14 nation under section 4041(c), the date of  
15 the advance notice of intent to terminate  
16 provided pursuant to section 4041(a)(2);

17 “(ii) in the case of a termination initi-  
18 ated by the Pension Benefit Guaranty Cor-  
19 poration under section 4042, the date of  
20 the application to the court under section  
21 4042(c); and

22 “(iii) in the case of a conversion to a  
23 cash balance plan, the date of the adoption  
24 of the amendment.



1                   “(C) COVERED DEFERRED COMPENSATION  
2                   PLAN.—

3                   “(i) IN GENERAL.—The term ‘covered  
4                   deferred compensation plan’ means any  
5                   plan providing for the deferral of com-  
6                   pensation of a disqualified individual,  
7                   whether or not—

8                   “(I) compensation of the dis-  
9                   qualified individual which is deferred  
10                  under such plan is subject to substan-  
11                  tial risk of forfeiture;

12                  “(II) the disqualified individual’s  
13                  rights to the compensation deferred  
14                  under the plan are no greater than  
15                  the rights of a general creditor of the  
16                  plan sponsor;

17                  “(III) all amounts set aside (di-  
18                  rectly or indirectly) for purposes of  
19                  paying the deferred compensation (in-  
20                  cluding income), and all income at-  
21                  tributable to such amounts, remain  
22                  (until made available to the disquali-  
23                  fied individual or other beneficiary)  
24                  solely the property of the plan sponsor

1 (without being restricted to the provi-  
2 sion of benefits under the plan);

3 “(IV) the amounts referred to in  
4 subclause (III) are available to satisfy  
5 the claims of the plan sponsor’s gen-  
6 eral creditors at all times (not merely  
7 after bankruptcy or insolvency); and

8 “(V) some or all of the com-  
9 pensation of the disqualified individual  
10 which is deferred under such plan is  
11 guaranteed by an insurance company,  
12 insurance service, or other similar or-  
13 ganization.

14 “(ii) EXCEPTION FOR QUALIFIED  
15 PLANS.—Such term shall not include a  
16 plan that is—

17 “(I) described in section  
18 219(g)(5)(A) of the Internal Revenue  
19 Code of 1986; or

20 “(II) an eligible deferred com-  
21 pensation plan (as defined in section  
22 457(b) of such Code) of an eligible  
23 employer described in section  
24 457(e)(1)(A) of such Code.

1                   “(iii) PLAN INCLUDES ARRANGE-  
2                   MENTS, ETC.—For purposes of this sub-  
3                   paragraph, the term ‘plan’ includes any  
4                   agreement or arrangement.

5                   “(D) DISQUALIFIED INDIVIDUAL.—The  
6                   term ‘disqualified individual’ means a director  
7                   or executive officer of the plan sponsor.

8                   “(E) TERMINATION BASED ON BANK-  
9                   RUPTCY REORGANIZATION.—A termination of a  
10                  plan which is a distress termination under sec-  
11                  tion 4041(c) or a termination instituted by the  
12                  Pension Benefit Guaranty Corporation under  
13                  section 4042 shall be treated as based on bank-  
14                  ruptcy reorganization if such termination is  
15                  based in whole or in part on the filing, by or  
16                  against any person who is a contributing spon-  
17                  sor of such plan or a member of such sponsor’s  
18                  controlled group, of a petition seeking reorga-  
19                  nization in a case under title 11, United States  
20                  Code, or under any similar law of a State or po-  
21                  litical subdivision of a State (or such a case in  
22                  which liquidation is sought has been converted  
23                  to a case in which reorganization is sought).

24                  “(F) TITLE IV TERMINOLOGY.—Any term  
25                  used in this subsection which is defined in sec-

tion 4001(a) shall have the meaning provided such term in section 4001(a).

“(4) SPECIAL RULES.—

“(A) COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in paragraph (1), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

“(B) MULTIPLE AMENDMENTS.—The Secretary shall issue regulations to prevent the avoidance of the purposes of this subsection through the use of 2 or more plan amendments rather than a single amendment.

“(C) CONTROLLED GROUPS, ETC.—For purposes of this subsection, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

1           “(D) TREATMENT OF EARNINGS.—Ref-  
 2           erences to deferred compensation shall be treat-  
 3           ed as including references to income attrib-  
 4           utable to such compensation or such income.

5           “(5) WAIVER.—

6           “(A) IN GENERAL.—In the case of any  
 7           plan amendment having the effect of a termi-  
 8           nation described in paragraph (1)(A), the Sec-  
 9           retary may waive the application of any require-  
 10          ment of the termination fairness standard of  
 11          section paragraph (2) with respect to any dis-  
 12          qualified individual who first commences service  
 13          for the plan sponsor after the notice date with  
 14          respect to such plan amendment. The Secretary  
 15          may grant any such waiver in the case of any  
 16          such plan amendment with respect to any such  
 17          disqualified individual only after consultation  
 18          with the Pension Benefit Guaranty Corporation.

19          “(B) REQUIREMENTS FOR WAIVER.—A  
 20          waiver may be granted under subparagraph (A)  
 21          only—

22                 “(i) upon the filing with the Secretary  
 23                 by the plan sponsor of an application for  
 24                 such waiver, in such form and manner as

1 shall be prescribed in regulations of the  
2 Secretary;

3 “(ii) upon a showing, to the satisfac-  
4 tion of the Secretary, that such waiver is  
5 a business necessity for the plan sponsor,  
6 as determined under such regulations, and  
7 is in the interest of plan participants and  
8 beneficiaries, as determined under such  
9 regulations; and

10 “(iii) after the participants, in such  
11 form and manner as shall be provided in  
12 such regulations, have been notified of the  
13 filing of the application for the waiver and  
14 have been provided a reasonable oppor-  
15 tunity to provide in advance comments to  
16 the Secretary regarding the proposed waiv-  
17 er.

18 “(6) EFFECT OF WAIVER GRANTED BY SEC-  
19 RETARY.—To the extent that any requirement of the  
20 termination fairness standard of this section is  
21 waived by the Secretary with respect to any disquali-  
22 fied individual under paragraph (5) in the case of  
23 any plan amendment having the effect of a termi-  
24 nation described in paragraph (1)(A), such require-  
25 ment under the termination fairness standard of

1 paragraph (2) shall not apply with respect to such  
 2 individual in the case of such plan amendment.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
 4 this section shall apply to—

5 (1) plan amendments adopted on or after May  
 6 10, 2005; and

7 (2) plan amendments adopted before such date  
 8 implementing a plan termination as described in sec-  
 9 tion 206(g)(1) of the Employee Retirement Income  
 10 Security Act of 1974 (as added by this section)  
 11 based on a bankruptcy reorganization in a case  
 12 under title 11 of the United States Code (or under  
 13 any similar law of a State or a political subdivision  
 14 of a State) pending on such date.

15 **SEC. 102. PENALTY ON FUNDING NONQUALIFIED DE-**  
 16 **FERRED COMPENSATION PLANS IN THE**  
 17 **EVENT OF A PENSION PLAN TERMINATION**  
 18 **BASED ON BANKRUPTCY REORGANIZATION**  
 19 **OR A CONVERSION OF A PENSION PLAN TO A**  
 20 **CASH BALANCE PLAN.**

21 (a) IN GENERAL.—Section 502 of the Employee Re-  
 22 tirement Income Security Act of 1974 (29 U.S.C. 1132)  
 23 is amended—

24 (1) in subsection (a)—

1 (A) in paragraph (8), by striking “; or”  
 2 and inserting a semicolon;

3 (B) in paragraph (9), by striking the pe-  
 4 riod and inserting “; or”; and

5 (C) by adding at the end the following:

6 “(10) by a fiduciary of a defined benefit plan  
 7 described in section 206(g) to enjoin any act or  
 8 practice that violates such section and to obtain re-  
 9 lief described under subsection (c)(8).”; and

10 (2) in subsection (c), by—

11 (A) redesignating paragraph (8) as para-  
 12 graph (9); and

13 (B) inserting after paragraph (7) the fol-  
 14 lowing:

15 “(8) In an action pursuant to subsection  
 16 (a)(10), if the court finds a violation of section  
 17 206(g), the court shall order the plan sponsor to pay  
 18 to the defined benefit plan an amount equal to the  
 19 amount of the accrual described in section  
 20 206(g)(2)(A) comprising the failure or the amount  
 21 of the distribution described in section 206(g)(2)(B)  
 22 comprising the failure, whichever is applicable.”.

23 (b) EFFECTIVE DATE.—The amendments made by  
 24 this section shall apply to—



1 (1) plan amendments adopted on or after May  
2 10, 2005; and

3 (2) plan amendments adopted before such date  
4 implementing a plan termination as described in sec-  
5 tion 206(g)(1) of the Employee Retirement Income  
6 Security Act of 1974 (as added by this section)  
7 based on a bankruptcy reorganization in a case  
8 under title 11 of the United States Code (or under  
9 any similar law of a State or a political subdivision  
10 of a State) pending on such date.

## 11 **TITLE II—FAIRNESS IN FUNDING**

### 12 **SEC. 201. PROHIBITION UNDER ERISA AGAINST FUNDING**

#### 13 **NONQUALIFIED DEFERRED COMPENSATION** 14 **PLANS WHILE MAINTAINING UNDERFUNDED** 15 **DEFINED BENEFIT PLANS.**

16 (a) IN GENERAL.—Part 3 of subtitle B of title I of  
17 the Employee Retirement Income Security Act of 1974 is  
18 amended—

19 (1) by redesignating section 308 as section 309;  
20 and

21 (2) by inserting after section 307 the following  
22 new section:

1 **“SEC. 308. FUNDING REQUIREMENTS WITH RESPECT TO**  
2 **UNDERFUNDED SINGLE-EMPLOYER DEFINED**  
3 **BENEFIT PLAN VIOLATED BY FUNDING OF**  
4 **COVERED DEFERRED COMPENSATION PLAN.**

5 “(a) IN GENERAL.—In any case in which, as of the  
6 valuation date for any plan year of a defined benefit plan  
7 which is a single-employer plan, the funded current liabil-  
8 ity percentage of such plan is less than 75 percent, during  
9 the period beginning with such date and ending imme-  
10 diately before the valuation date for the following plan  
11 year—

12 “(1) the plan sponsor of such defined benefit  
13 plan (or any member of the plan sponsor’s controlled  
14 group) may not contribute to a covered deferred  
15 compensation plan maintained by the plan sponsor  
16 (or any such member); and

17 “(2) a disqualified individual may not accrue  
18 any amount of deferred compensation under the  
19 terms of any covered deferred compensation plan  
20 maintained by the plan sponsor of such defined ben-  
21 efit plan (or by any member of the plan sponsor’s  
22 controlled group), irrespective of whether the accrual  
23 in deferred compensation is expressed in the form of  
24 a promise, a guarantee, or any other representation.

25 “(b) DEFINITIONS; SPECIAL RULE.—For purposes of  
26 this section—

1           “(1) The term ‘funded current liability percent-  
2           age’ has the meaning provided in section  
3           302(d)(8)(B).

4           “(2) The term ‘covered deferred compensation  
5           plan’ has the meaning provided in section  
6           206(g)(3)(C).

7           “(3) The term ‘disqualified individual’ has the  
8           meaning provided in section 206(g)(3)(D).

9           “(4) The term ‘controlled group’ has the mean-  
10          ing provided in section 302(c)(11)(B)(ii).

11          “(5) Any reference to deferred compensation  
12          shall be treated as including references to income at-  
13          tributable to such compensation or income.

14          “(c) WAIVER.—

15               “(1) IN GENERAL.—The Secretary may waive  
16               the application of any requirement with respect to  
17               any contribution described in subsection (a)(1) or  
18               any accrual described in subsection (a)(2). The Sec-  
19               retary may grant such waiver only after consultation  
20               with the Pension Benefit Guaranty Corporation.

21               “(2) REQUIREMENTS FOR WAIVER.—A waiver  
22               may be granted under paragraph (1) only—

23                       “(A) upon the filing with the Secretary by  
24                       the plan sponsor of an application for such

1 waiver, in such form and manner as shall be  
2 prescribed in regulations of the Secretary;

3 “(B) upon a showing, to the satisfaction of  
4 the Secretary, that such waiver is a business  
5 necessity for the plan sponsor, as determined  
6 under such regulations, and is in the interest of  
7 plan participants and beneficiaries, as deter-  
8 mined under such regulations; and

9 “(C) after the participants, in such form  
10 and manner as shall be provided in such regula-  
11 tions, have been notified of the filing of the ap-  
12 plication for the waiver and have been provided  
13 a reasonable opportunity to provide in advance  
14 comments to the Secretary regarding the pro-  
15 posed waiver.

16 “(d) EFFECT OF WAIVER.—To the extent that a  
17 waiver is granted by the Secretary under subsection (c)  
18 with respect to any contribution described in subsection  
19 (a)(1) or any accrual described in subsection (a)(2), the  
20 requirements of subsection (a) shall not apply with respect  
21 to such contribution or accrual.”.

22 (b) CLERICAL AMENDMENT.—The table of contents  
23 in section 1 of such Act is amended by striking the item  
24 relating to section 308 and inserting the following new  
25 items:

“Sec. 308. Funding requirements with respect to underfunded single-employer defined benefit plan violated by funding of covered deferred compensation plan.

“Sec. 309. Effective dates.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply with respect to plan years begin-  
3 ning on or after January 1, 2006.

4 **SEC. 202. PENALTY ON FUNDING NONQUALIFIED DE-**  
5 **FERRED COMPENSATION PLANS WHILE**  
6 **MAINTAINING UNDERFUNDED DEFINED BEN-**  
7 **EFIT PLANS.**

8       (a) IN GENERAL.—Subsection 502 of the Employee  
9 Retirement Income Security Act of 1974 (29 U.S.C. 1132)  
10 is amended—

11           (1) in subsection (a)(10) (as added by section  
12 101), by inserting “or 308” after “206(g)”; and

13           (2) in subsection (c) (as amended by section  
14 101), by amending paragraph (8) to read as follows:

15           “(8) In an action pursuant to subsection  
16 (a)(10), if the court finds a violation—

17           “(A) of section 206(g), the court shall  
18 order the plan sponsor to pay to the defined  
19 benefit plan an amount equal to the amount of  
20 the accrual described in section 206(g)(2)(A)  
21 comprising the failure or the distribution de-  
22 scribed in section 206(g)(2)(B) comprising the  
23 failure, whichever is applicable; and

1           “(B) of section 308, the court shall order  
 2           the plan sponsor to pay to the defined benefit  
 3           plan an amount equal to the amount of any de-  
 4           ferred compensation accrued to a disqualified  
 5           individual in violation of such section.”.

6           (b) EFFECTIVE DATE.—The amendments made by  
 7           this section shall apply with respect to plan years begin-  
 8           ning on or after January 1, 2006.

## 9                   **TITLE III—FAIRNESS IN** 10                   **DISCLOSURE**

### 11   **SEC. 301. DISCLOSURE WITH RESPECT TO BENEFITS** 12                   **UNDER NONQUALIFIED DEFERRED COM-** 13                   **PENSATION PLANS.**

14           (a) IN GENERAL.—Section 101 of the Employee Re-  
 15           tirement Income Security Act of 1974 (29 U.S.C. 1021)  
 16           is amended—

17                   (1) by redesignating subsection (j) as sub-  
 18                   section (k); and

19                   (2) by inserting after subsection (i) the fol-  
 20                   lowing new subsection:

21           “(j) DISCLOSURE WITH RESPECT TO BENEFITS  
 22           UNDER COVERED DEFERRED COMPENSATION PLANS.—

23                   “(1) IN GENERAL.—In any case in which—

24                           “(A) an amendment to a pension plan is  
 25                           adopted which has the effect of—

1 “(i) eliminating future benefit accru-  
2 als under the plan;

3 “(ii) converting the plan to a cash bal-  
4 ance plan in a case described in section  
5 206(g)(1)(B);

6 “(iii) reducing the rate of future ben-  
7 efit accruals under the plan (in the case of  
8 a defined benefit plan); or

9 “(iv) reducing future employer con-  
10 tributions under the plan (in the case of a  
11 defined contribution plan); or

12 “(B) the plan administrator of a pension  
13 plan has filed under section 4041(a)(2) a notice  
14 of intent to terminate such plan in a distress  
15 termination under section 4041(c) based on  
16 bankruptcy reorganization or, in advance of fil-  
17 ing such a notice, has filed a motion with the  
18 court in the proceedings relating to such bank-  
19 ruptcy reorganization seeking approval to com-  
20 mence proceedings for such a distress termi-  
21 nation,

22 the plan administrator shall provide to each plan  
23 participant and beneficiary a notice under this sub-  
24 section with respect to each covered deferred com-  
25 pensation plan maintained by the plan sponsor of

1 the pension plan (and each member of the plan  
2 sponsor's controlled group).

3 “(2) NOTICE.—A notice required under this  
4 subsection with respect to a covered deferred com-  
5 pensation plan shall set forth, in language calculated  
6 to be understood by the average pension plan partic-  
7 ipant—

8 “(A) a complete summary description of  
9 the terms of the covered deferred compensation  
10 plan;

11 “(B) the actuarial present value of the  
12 benefit liabilities of the covered deferred com-  
13 pensation plan, as of the most recent valuation  
14 date of such plan;

15 “(C) any additional cost to the plan spon-  
16 sor (or to the member of the plan sponsor's  
17 controlled group), for the preceding plan year of  
18 such plan, of maintaining such covered deferred  
19 compensation plan, including tax expenditures  
20 attributable to the maintenance of such plan  
21 (or, if not known on the date of the notice, a  
22 reasonable estimation thereof); and

23 “(D) in any case described in paragraph  
24 (1)(B)—



1 “(i) a statement that the notice of in-  
2 tent to terminate or motion has been filed;  
3 and

4 “(ii) a statement of the extent to  
5 which the actuarial present value of benefit  
6 liabilities of the pension plan referred to in  
7 paragraph (1)(B) is expected to be reduced  
8 by reason of the termination.

9 “(3) TIMING OF NOTICE.—A notice under this  
10 subsection shall be provided—

11 “(A) not later than 15 days after—

12 “(i) the date of the adoption of the  
13 amendment described in paragraph (1)(A);  
14 or

15 “(ii) the date of the notice of intent to  
16 terminate described in paragraph (1)(B),  
17 (as the case may be), and

18 “(B) in the same manner as is provided  
19 under section 104(b)(1) with respect to sum-  
20 mary descriptions of plan modifications or  
21 changes.

22 “(4) DEFINITIONS; SPECIAL RULE.—For pur-  
23 poses of this subsection—

24 “(A) The term ‘cash balance plan’ has the  
25 meaning provided in section 206(g)(3)(A).

1           “(B) The term ‘covered deferred com-  
 2           pensation plan’ has the meaning provided in  
 3           section 206(g)(3)(C).

4           “(C) The term ‘controlled group’ has the  
 5           meaning provided in section 302(c)(11)(B)(ii).

6           “(D) Whether a termination of a plan  
 7           which is a distress termination under section  
 8           4041(c) is based on bankruptcy reorganization  
 9           shall be determined as provided in section  
 10          206(g)(3)(E).”.

11          (b) ENFORCEMENT.—Section 502(c)(1) of such Act  
 12          (29 U.S.C. 1132(c)(1)) is amended by striking “or section  
 13          101(e)(1)” and inserting “or subsection (e)(1) or (j)(1)  
 14          of section 101”.

15          (c) EFFECTIVE DATE.—The amendments made by  
 16          this section shall apply with respect to—

17               (1) plan amendments adopted on or after Janu-  
 18          ary 1, 2006; and

19               (2) notices of intent to terminate or motions  
 20          (described in section 101(j)(1)(B) of the Employee  
 21          Retirement Income Security Act of 1974) (as added  
 22          by this section) filed on or after such date.

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